

In re: Dube *et al.*
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REMARKS

Reexamination and reconsideration of this Application, withdrawal of the rejections, and formal notification of the allowability of all claims as now presented are earnestly solicited in light of the above amendments and remarks which follow.

Claims 1-26 are pending in the application. Claim 1 has been amended to remove the "optional" language and to remove reference to "alkali metal". Support for this amendment can be found throughout the specification and particularly on page 2. Independent Claims 1, 10, and 15 have been amended to incorporate the subject matter of original Claim 5. Claim 5 has been cancelled. Claim 18 has been amended to remove language directed to a temperature of 150°C and add language directed to a temperature of 175°C. Support for this amendment may be found throughout the specification, and particularly in original claim 6 and on pages 2-6. Claim 23 has been amended to correct dependency. It is believed that no new matter has been added through these amendments.

CLAIM REJECTIONS - Section 103

Claims 1-8, 13, and 23-24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the EFSFTN in view of Richards. Similarly, Claims 10-11, 14-22, and 24-26 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the EFSFTN. The Office Action states the EFSFTN discloses it is known to caramelize glucose, fructose, or starch syrups in the presence of a sodium hydroxide catalyst at elevated temperatures, and that such caramel can then be added to tobacco. Further, the Office Action states that while it is not explicitly stated in the EFSFTN that a smoking article is prepared from this tobacco with caramel additive, it would follow that such a product is ultimately prepared because tobacco is conventionally used as a filler for smoking articles. Additionally, the Office Action states that Richards discloses that reducing sugars may be heated either dry or with water (alone or in the presence of a base) during the caramelization process.

Claim 9 stands rejected under 35 U.S.C. §103(a) as being unpatentable over the EFSFTN in view of Richards, and further in view of Hedge. Similarly, Claim 12 stands rejected under 35

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U.S.C. §103(a) as being unpatentable over the EFSFTN in view of Hedge. Although noting that the EFSFTN modified by the Richards reference does not state the caramel composition is applied at an amount of from about 5% to 8% by weight based on the total dry weight of the tobacco leaf or cut filler in the smoking article, the Office Action relies upon the Hedge reference as disclosing adding caramel to cut tobacco wherein the weight percentage of caramel ranges from 2-20%. Applicants respectfully traverse all of the above rejections.

Applicants respectfully submit that one of ordinary skill would have no motivation to combine the EFSFTN and Richards references as contemplated in the Office Action. While the EFSFTN states caramel may be added to tobacco, it limits the use of such additive for the purpose of providing color (page 661, col. 2). The Richards reference is not directed to additives for tobacco at all. Instead, the Richards reference is directed to a process for producing caramel with an increased concentration of fructose oligosaccharides for the purpose of increasing the nutritional value of the caramel. There is no suggestion in the Richards reference that the caramel described therein would be suitable for use in a smoking article. As the present invention is directed to adding caramel to tobacco as a method for improving flavor in a smoking article, Applicants respectfully submit that one of ordinary skill in the art would not combine the references as noted in the Office Action and request reconsideration and withdrawal of any rejection based on such a combination.

Even if the two references are properly combinable, which Applicants do not admit, the EFSFTN reference, alone or in combination with any other reference, would still fail to teach or suggest the present invention. As stated above, the EFSFTN teaches caramelization of sucrose, D-glucose, and D-fructose in the presence of a hydroxide catalyst (page 662, col. 1-2), but only at temperatures at or below the range of 120-130°C (page 663, col. 1). The EFSFTN specifically teaches away from thermolysis at temperatures above that range as being detrimental to the tinctorial strength and flavor of the caramel. In contrast, the present invention is directed at improving the flavor of a smoking article through application of a flavorful caramel composition. Such flavorful caramel composition is produced by heating an aqueous mixture of a reducing sugar and a hydroxide at a temperature in excess of the range of 120-130°C taught in the

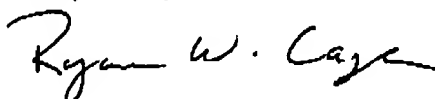
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EFSFTN. Specifically, as amended, all of the pending claims recite heat treatment of a reducing sugar and a hydroxide at a temperature of at least about 150°C. The EFSFTN directly teaches away from such a method. Thus, the EFSFTN, even if combined with Richards, fails to teach or suggest the present invention. For the same reasons as stated above, there would likewise be no motivation to combine the EFSFTN and the Richards reference with the Hedge reference, and even if so combined, the references still fail to teach or suggest the present invention. Therefore, Applicants respectfully request reconsideration and withdrawal of these rejections.

Accordingly, it is respectfully submitted that Applicants have made a significant and important contribution to the art, which is neither disclosed nor suggested in the art. It is believed that no new matter has been added by this amendment and that all pending claims are now in condition for immediate allowance. It is requested that the Examiner telephone the undersigned should the Examiner have any comments or suggestions in order to expedite examination of this case.

It is not believed that extensions of time or fees for net addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR §1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

Respectfully submitted,



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Date

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I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231, on October 2, 2002.

Rebecca Kerney

N/A

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Version with Markings to Show Changes Made:

Please amend Claims 1, 10, 15, 18, and 23 as follows:

1. (Twice Amended) A method for improving the flavor and aroma characters of a smoking article, comprising:
providing an aqueous mixture consisting essentially of a reducing sugar and [optionally] a hydroxide [of an alkali metal];
subjecting said mixture to heat treatment for a time and under conditions sufficient to produce a flavorful caramel composition, ~~wherein said heat treatment is conducted at a temperature of at least about 150°C;~~
applying said flavorful composition to a tobacco leaf or cut filler made thereof; and
preparing a smoking article comprising said tobacco leaf or cut filler.

10. (Amended) A method for improving the flavor and aroma characters of a smoking article, said method comprising:
providing a mixture consisting essentially of high fructose corn syrup and sodium hydroxide;
subjecting said mixture to heat treatment for a time and under conditions sufficient to produce a flavorful composition, ~~wherein said heat treatment is conducted at a temperature of at least about 150°C;~~
applying said flavorful composition directly to a tobacco material selected from the group consisting of tobacco leaves and cut fillers made thereof; and
preparing a smoking article comprising said tobacco material.

15. (Amended) A method for improving the flavor and aroma characters of a smoking article comprising:
providing a mixture consisting essentially of a reducing sugar and a hydroxide of an alkali

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metal;

subjecting said mixture to heat treatment for a time and under conditions sufficient to produce a flavorful caramel composition, ~~wherein said heat treatment is conducted at a temperature of at least about 150°C;~~

applying said flavorful composition to a tobacco leaf or cut filler made thereof; and preparing a smoking article comprising said tobacco leaf or cut filler.

18. (Amended) The method of Claim 15, wherein the heat treatment is conducted at a temperature of at least about [150] 175°C.

23. (Amended) The method of Claim [2] 1, wherein the hydroxide is present in an amount of less than about 30 weight percent on a water-free basis.